



STATE OF DELAWARE

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MEMORANDUM

TO: The Chair and Commissioners

FROM: Lisa B. Driggins, Public Utilities Analyst

Handwritten initials "LBD" inside a hand-drawn circle.

DATE: January 18, 2017

SUBJECT: IN THE MATTER OF THE APPLICATION OF ARTESIAN WATER COMPANY, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE WATER SERVICES PURSUANT TO 26 DEL. C. §203C ("ODESSA") (SUBMITTED JUNE 23, 2016 AND FILED JANUARY 17, 2017)
PSC DOCKET NO. 16-0730

On June 23, 2016, Artesian Water Company, Inc. ("Artesian" or the "Company") filed an application ("Application") with the Delaware Public Service Commission (the "Commission") seeking a Certificate of Public Convenience and Necessity ("CPCN") to provide water services to 139 parcels of land located within town limits of Odessa, New Castle County, Delaware, known as Odessa (the "Proposed Service Area") pursuant to 26 *Del. C.* §203C(e)(1)b. As noted below, the Application has been revised and now requests a CPCN for 214 parcels of land located within town limits of Odessa, New Castle County, Delaware.

The Company's original filing was submitted on June 23, 2016, but the submitted Application did not meet the minimum filing requirements ("MFR's). Commission Staff ("Staff") requested the Company file the following additional documentation: (1) Provide the supporting documentation required by 26 *Del. C.* §203C, including evidence that all landowners of the proposed territory received notification, and (2) Provide a complete list of county tax map parcel numbers with corresponding names and addresses of property owners and a copy of the tax map(s) for the area.

On July 7, 2016, Staff requested Artesian to notify all landowners and provide the supporting documentation required by 26 *Del. C.* §203C that all landowners of the proposed territory received notification. On December 22, 2016, Artesian filed a revised application which included evidence of landowner notification and also changed the number of parcels from 139 to 214. After further review of the revised application, Commission Staff noticed 30 of the

214 notices sent out were returned pursuant to 26 *Del. Admin. C.* § 2002-3.5.2.¹ The filing also included evidence that Artesian had sent a second certified mailing to the landowners. Additionally, Staff received additional documentation showing that the original landowner notification was unclaimed pursuant to 26 *Del. Admin. C.* § 2002-3.5.2. On January 17, 2017, Artesian provided evidence that the second notice had been received and signed for by the landowners of record.

As required by 26 *Del. C.* §203C(e)(1)b. and the Commission's Regulations Governing Certificates of Public Convenience and Necessity for Water Utilities, 26 *Del. Admin. C.* §2002 (the "Regulations"), the filed Application contained the following documentation: (1) a certified copy of a resolution or ordinance from the governing body of a municipality that requests, directs, or authorizes the applicant to provide water service to the proposed territory to be served; (2) copies of the United States Postal Service forms verifying that the Company sent, via certified mail, a notice to all landowners of record of each parcel included in the Proposed Service Area; (3) a list of the County tax map parcel identification numbers of the properties and identification of all landowners of record included in the Proposed Service Area; and (4) a copy of the associated tax map clearly marking the Proposed Service Area. Additionally, the Application contained Artesian's statement that its expansion of service to the Proposed Service Area will comply with the water pressure requirements of 26 *Del. C.* §§403(a) and (b) and that Artesian is not barred by any of the restrictions set forth in 26 *Del. C.* §403(c).

Artesian also included a flyer and meeting minutes from the Odessa Town Council meeting. These meetings discussed Artesian offering potable water to the Town of Odessa. These meeting are open to the public to attend.

In addition to the required notification to all the landowners of record in the Proposed Service Area, Artesian published a notice in The News Journal on May 27, 2016, and Delaware State News newspaper on May 26, 2016. The notice advised residents of the Application, that the Application may be reviewed at the Commission's office during normal business hours or on the Commission's website, that a hearing on this matter would not be held unless an appropriate request for a hearing was received, and that the property owner may object to or "opt-out" of the Proposed Service Area. To date, no comments regarding the Company or this Application have been received, and no landowners of record included in the Proposed Service Area have objected to the Application or elected to "opt-out" of the Proposed Service Area.

On January 17, 2017, the Company requested a waiver of the timing requirement in accordance 26 *Del. Admin. C.* §2002-9.2. The Application was not deemed complete until January 17th a date that is outside of the required time line necessary to file a CPCN Application.

¹ Under 26 *Del. Admin. C.* §2002-3.5.2, if a Landowner Notification is returned for any reason copies of all material or messages provided to the applicant by the Postal Service reflecting either delivery of certified mail or failure of certified mail delivery because the delivery was "refused," "unclaimed," "undeliverable," "unknown," or otherwise not completed. The Company failed to provide such evidence in the originally-submitted application.

² As a “good cause,” the Company submits granting the requested waiver would be in the public interest because the timing requirement is an administrative rather than a statutory requirement and Artesian had provided all necessary information about the parcels. Additionally, Artesian believes that granting the waiver should not be unduly disruptive for customers and would provide for an administratively efficient use of resources. Lastly, Artesian believes that extending water service to the parcels listed in the Completed Application would not harm or degrade its ability to provide safe, reliable water service for its present customers. Staff believes that the reasons given as “good cause” justify a waiver, therefore Staff recommends that the Commission grant the requested waiver of the timing requirement as set forth in Section 9.2 of the Regulations.

Artesian requested Commission’s approval of the form of notice as required by 26 *Del. Admin. C.* §2002-10.1. Staff believes Artesian’s form of notice provides adequate landowner notice, Staff recommends that the form of notice used by Artesian in this application be approved for use by Artesian.

Staff has completed its review of the Filed Application and finds that it is in compliance with the provisions of 26 *Del. C.* §203C and the Regulations except for (i) the timing requirement in accordance 26 *Del. Admin. C.* §2002-9.2 of the Regulations, which Staff recommends be excused and (ii) seeking Commission approval of the notice it sent to the landowner without prior Commission approval. No other errors or omissions were found. Finally, to determine whether the Commission should deny the requested CPCN as allowable under 26 *Del. C.* §203C(f), Staff solicited comments from the Delaware Department of Natural Resources, the Office of the State Fire Marshal, and the Office of Drinking Water of the Division of Public Health. All three agencies responded by indicating that they have no issues relating to Artesian’s ability to provide safe, adequate, and reliable water services to its existing customers.

In summary, Staff recommends that the Commission grant Artesian’s requested waiver of the regulatory timing requirements and approve the form of notice that was sent to the landowners and grant the CPCN requested in PSC Docket No. 16-0730 as submitted on June 23, 2016 and filed January 17, 2017.

² Under 26 *Del. Admin. C.* §2002-9.2, the form of notice required by these regulations shall be sent to each landowner of record not more than thirty-five days and not less than thirty days prior to the filing of the Application.